

GAN CHONG GUAN TRANSPORT SDN BHD

A

v.

**KETUA PENGARAH JABATAN PENGANGKUTAN JALAN
MALAYSIA & ORS**

B

HIGH COURT MALAYA, MUAR
AHMADI ASNAWI JC
[CIVIL SUIT NO: 22-9-2004]
20 AUGUST 2008

C

ADMINISTRATIVE LAW: Remedies - Enforcement of public duties - Challenging decisions of Road Transport Department - Decisions of a public authority - Procedure applicable is by way of an application for judicial review under O. 53 of Rules of the High Court 1980

D

CIVIL PROCEDURE: Action - Abuse of process - Writ action commenced to challenge decision of a public authority - Whether misconceived - Procedure applicable is by way of an application for judicial review under O. 53 of Rules of the High Court 1980 - Failure to comply with O. 53 amounts to abuse of process of court - Whether writ action ought to be dismissed - Defendant's failure to raise issue of non-compliance in statement of agreed facts - Defendant's failure to apply to strike out action at early stages for non-compliance - Non-compliance pleaded in statement of defence - Defendant can still object to writ action at submission stage

E

F

In 1998, the plaintiff purchased a vehicle ("the said vehicle") from Metro Cosmos Express Tours & Transport Sdn Bhd ("Metro Cosmos"). Before the road tax for commercial vehicles may be renewed, the said vehicle must be examined every half yearly by the 5th defendant to ensure among others the authenticity/accuracy/correctness of the engine and chassis numbers. Throughout the duration the said vehicle was in the possession of Metro Cosmos and the plaintiff, the said vehicle went through not less than 14 examinations or inspections, conducted by the 5th defendant. All these examinations revealed that the chassis of the said vehicle was YV2A4A2A0G08800017. This number was recorded in the vehicle's Perakuan Pendaftaran JPJ K2 ("JPJ K2"). However on 13 May 2002 when the plaintiff sent the said vehicle to the 5th defendant for examination for the purpose of changing its entire engine, it was discovered that while the engine and chassis number were authentic and untampered, it nevertheless carried a chasis number which was different from the number as

G

H

I

- A recorded on the vehicle's JPJ K2. The new chassis number discovered was – YV2F7A2A0GC880017. The plaintiff contended that this discrepancy was caused by typographical error committed by the defendants. The plaintiff thus prayed, *inter alia*, for a declaration that the JPJ K2 of the said vehicle be rectified and
- B that the road tax for the said vehicle be renewed. The defendants contended that the plaintiff's writ action and failure to comply with the requirements of O. 53 of the Rules of the High Court 1980 ("RHC") was an abuse of the process of the court. The plaintiff argued that the defendants could not raise the issue of non-
- C compliance of O. 53 requirements on the grounds that this issue was not included in "Isu-isu Untuk di Bicarakan"(in Lampiran 52).

Held (dismissing the plaintiff's claim in its entirety with costs):

- D (1) The prayers sought by the plaintiff were grounded upon the 1st and/or 2nd defendant's refusal to rectify the discrepancy relating to the chassis number as recorded in the JPJ K2. The decisions of the 1st and/or 2nd defendant in respect of the same were decisions or acts of a public authority. What the
- E plaintiff was asking were orders in the form of *mandamus*, challenging the decisions of the 1st and/or 2nd defendant, well within the realm of the public law. For these purposes, the procedure applicable is by way of an application for judicial review through the mechanism provided by O. 53 of the
- F RHC. Failure to comply is an abuse of the process of the court and an attempt to circumvent or evade the clear requirements of O. 53 of the RHC. (paras 9, 11 & 19)
- G (2) Lampiran 52 related to issues of facts agreed by the parties to be tried during the trial whereas issues of non-compliance of legal requirements are matters of law to be ventilated at the stage of submission or at any stage of the proceedings. No witnesses are required to testify on matters of law and the exclusion of the same in Lampiran 52 did not prevent the said
- H defendants from arguing or raising the same at the submission stage. Additionally there was no issue that the plaintiff was taken by surprise at this line of argument for the said defendants had plainly pleaded the same in their statement of defence. The defendants' failure to take steps to strike-out the writ and statement of claim for non-compliance at the earliest
- I possible stage of the proceedings was no ground to restraint the defendants from raising the issue now. (paras 20 & 21)

- (3) The 1st and 2nd defendants were not guilty of committing a typographical error when entering the details of the said vehicle's chassis number in the JPJ K2. The 1st and 2nd defendants wholly acted upon the details supplied by the person who first applied for the registration of the said vehicle and later the plaintiff himself and principally upon the findings of the physical examination conducted by the 5th defendant. There is no duty imposed upon the 1st and 2nd defendants to themselves conduct a physical examination of the said vehicle to verify the findings of the 5th defendant. On the balance of probabilities, the 1st and 2nd defendants carried no blame at all for the said discrepancy. The 4th defendant thus could not be vicariously liable for a liability that did not exist among its agencies. (paras 31, 34 & 36) A
B
C
- (4) The procedures adopted by the 5th defendant in the examination of the said vehicle was proper, regular and accurate. The 5th defendant was not in breach of its contractual obligations or any statutory or common law duty. (paras 42 & 44) D
- (5) The plaintiff has no cause of action against the 6th defendant. The 6th defendant did not sell the said vehicle to the plaintiff but to Metro Cosmos. (para 45) E

Case(s) referred to:

- Arab Malaysian Finance Bhd v. Steven Phoa Cheng Loon & Ors* [2003] 1 CLJ 585 CA **(foll)** F
- Bencon Development Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Ors* [1999] 8 CLJ 37 HC **(foll)**
- Cocks v. Thanet District Council* [1982] 3 All ER 1135
- O'Reilly v. Mackman* [1982] 3 All ER 1124 **(foll)**
- Pendaftar dan Pemeriksa Kereta-kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd* [2000] 2 CLJ 573 **(dist)** G
- Robert Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [2005] 8 CLJ 613 HC **(foll)**
- Shaharuddin Ali & Anor v. Superintendent of Lands and Surveys Kuching* [2004] 4 CLJ 775 HC **(foll)** H
- Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2002] 2 CLJ 697 CA **(dist)**
- Soonly Limes Factory Sdn Bhd v. Pengarah Jabatan Pengangkutan Jalan Negeri Perak* [2006] 2 CLJ 676 HC **(foll)**
- Subramaniam Vythilingam v. The Human Rights Commission of Malaysia (Suhakam) & Ors* [2003] 6 CLJ 175 HC I

- A** *Sugumar Balakrishnan v. Chief Minister State of Sabah & Anor* [1988] 1 LNS 210 (**dist**)
Teh Guan Teik v. Inspector General of Police & Anor [1998] 3 CLJ 153 FC (**dist**)
TR Rumah Lampoh Dana & Ors v. Government of Sarawak [2005] 8 CLJ 705 HC (**fol**)
- B** *Warner v. Metropolitan Police Commissioner* [1968] 2 All ER 356 (**fol**)

Legislation referred to:

- Courts of Judicature Act 1964, s. 25(2)
Road Transport Act 1987, ss. 11, 126
- C** Rules of the High Court 1980, O. 53

Rules of the Supreme Court 1977 [UK], O. 53

For the plaintiff/appellant - KH Tan; M/s KH Tan & Co
For the 1st, 2nd, 3rd & 4th defendants - Syahliza Warnoh SFC
- D** *For the 5th defendant - Khairul Azam; M/s Azam Lim & Pang*

Reported by Amutha Suppayah

JUDGMENT

- E**
- F** [1] Sometimes in 1998, the plaintiff purchased vehicle No. JDW 3301 (“the said vehicle”) from Metro Cosmos Express Tours & Transport Sdn Bhd (hereinafter referred to as “Metro Cosmos”. The particulars of the said vehicle appearing on its Registration Certificate JPJ K2 (Perakuan Pendaftaran) at p. 15 of Lampiran 44 are as follows:

- | | | |
|----------|---------------------|---------------------|
| G | No. enjin: | 7D 7IF 914 558 558 |
| | No. Chassis: | YV 2A4A2A0G08800017 |
| | Buatan: | Volvo |
| | Nama Model: | FL 7/34 |
| | Keupayaan Enjin: | 6700 S.P |
| H | Tahun Dibuat: | 1991 |
| | Tarikh Pendaftaran: | 1 March 1996 |

- I** [2] It is a requirement of the 1st and 2nd defendants that before the road tax (Lesen Kenderaan Motor (LKM) for commercial vehicles may be renewed, the said vehicle must be examined every half yearly by the 5th defendant to ensure among others the authenticity/accuracy/correctness of the engine and chassis

numbers. In compliance of the same, the plaintiff regularly sent the said vehicle to the 5th defendant for examination every half yearly. The said vehicle got through the said examinations by the 5th defendant with the remarks “Lulus”.

[3] Through out the duration the said vehicle was in the possession of Metro Cosmos and the plaintiff, the said vehicle went through not less than 14 examinations or inspections, conducted by the 5th defendant. In all these examinations including the first examination prior to the registration of the said vehicle conducted on 13 February 1996, the said examinations revealed that the chassis of the said vehicle bears the following number: YV2A4A2A0G08800017. This is also the number recorded in the vehicle’s Perakuan Pendaftaran JPJ K2.

[4] However on 13 May 2002 when the plaintiff sent the said vehicle to the 5th defendant for examination for the purpose of changing its entire engine, it was discovered in the said examination (Pemeriksaan Berkala dan Pemeriksaan Khas – Laporan B2) that while the engine and chassis number were authentic and untampered, it nevertheless carried a chasis number which was different from the number as recorded on the vehicle’s Perakuan Pendaftaran JPJ K2 and the number gathered from the previous 14 examinations. The new chassis number discovered was - YV2F7A2A0GC880017. For ease of reference, the discrepancy could be tabulated in the following table:

Perakuan pendaftaran (1.3.1996) based on examination on 13.2.1996	Y	V	2	A	4	A	2	A	0	G	0	8	8	0	0	0	1	7
Laporan B2 Based on examination on 13.5.2002	Y	V	2	F	7	A	2	A	0	G	C	8	8	0	0	1	7	

[5] It was the plaintiff’s contention that the said discrepancy was caused by typographical error committed by any one or all of the defendants herein as a result of their omissions, negligence, breach of statutory, contractual and/or common law duties. On account of the same the plaintiff claimed to have since suffered

- A losses when they were not allowed to renew their Lesen Kenderaan Motor, effectively rendering the said vehicle grounded, unable to neither use nor sell the said vehicle. The plaintiff further avers that despite repeated requests and appeals the 1st and 2nd defendant's refused to rectify the said discrepancy or typographical error as found in the said Perakuan Pendaftaran JPJ K2. The 1st and 2nd defendant have also refused to renew the Plaintiff's Lesen Kenderaan Motor of the said vehicle due to the said discrepancy.

C [6] Thus, *vide* para 28 of the statement of claim the plaintiff prays, among others, the following reliefs/orders:

- D (a) Declaration and/or mandatory order that the Perakuan Pendaftaran JPJ K2 of the said vehicle be rectified so that the chassis number stated therein shall correctly reflect the number as appearing on the body of the vehicle and be entered as YV2F7A2A0GC880017;
- E (b) An order that the Lesen Kenderaan Motor (road tax) in respect of the said vehicle be renewed and that the plaintiff be allowed to continue with the use of the said vehicle;
- (c) An order that the plaintiff be allowed to apply for a new Carriage License 'A' in respect of the said vehicle;
- (d) Special damages;
- F (e) General damages.

G [7] In para 17 of their statement of defence, the 1st, 2nd, 3rd and 4th defendants contended that the reliefs sought by the plaintiff in para 28(a), (b) and (c) are in essence against the requirements of O. 53, Rules of the High Court 1980 (RHC) and that no prior leave was obtained for the plaintiff to institute the same.

H [8] It is thus the contention of the learned senior federal counsel (SFC) for the 1st, 2nd, 3rd and 4th defendants that the plaintiff's writ action and failure to comply with the requirements of O. 53 RHC is an abuse of the process of the court. Consequently the said prayers should be struck out.

I [9] It is very obvious that the prayers sought by the plaintiff intimated above were grounded upon the 1st and/or 2nd defendant's refusal to rectify the said discrepancy or typographical error relating to the said vehicle's chassis number as recorded in

the vehicle's Perakuan Pendaftaran JPJ K2. It also emanates from the 1st and/or 2nd defendant's refusal to renew the vehicle's Lesen Kenderaan Motor, conveyed to the plaintiff through their letter dated 18 November 2003 (p 38, Lampiran 44). Admittedly the decisions of the 1st and/or 2nd defendant in respect of the same are decisions or acts of a public authority. What in effect the plaintiff is asking are orders in the form of *mandamus*, challenging the said decisions of the 1st and/or 2nd defendant, well within the realm of the public law.

[10] The court's jurisdiction in respect of mandatory orders was conferred by s. 25 of the Courts of Judicature Act 1964, read together with the Schedule and proviso thereto. Section 25(2) provides:

without prejudice to the generality of subsection (1) the High Court shall have the additional powers set-out in the Schedule;

The proviso to the section states:

Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

Meanwhile, para 1 of the Schedule states:

Power to issue to any person or authority directions, orders or writs, including writs of the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any others, for the enforcement of the rights conferred by Part II of the Constitutions, or any of them or for any purpose.

[11] For these purposes, the procedure applicable is by way of an application for judicial review through the mechanism provided by O. 53 of the RHC 1980. Pursuant to gazette notification P.U. (A) 342/2000 O. 53 was amended in its entirety. The whole procedure is now called "Application for Judicial Review". Unlike the old O. 53 which is confined to only prerogative orders, the remedies now available under the new O. 53 is wider, with the inclusion of reliefs specified in para 1 of the Schedule to the Courts of Judicature Act 1964 as well as declaratory orders and injunctions.

[12] It is equally clear now that the new O. 53 RHC is in *pari materia* with the provisions of the post 1977 O. 53 of the English Rules of the Supreme Court. The extend of the application of this new O. 53 in England is encompassed in the judgment of the House of Lords in *O'Reilly v. Mackman* [1982] 3 All ER 1124. The relevant part of the headnote reads:

- A Held – dismissing the appeal, that since all the remedies for the infringement of rights protected by public law could be obtained on application for judicial review, as a general rule it would be contrary to public policy and an abuse of the process of the court for a plaintiff complaining of a public law rights to seek redress by ordinary action and that accordingly since in each case the
- B only claim made by the plaintiff was a declaration that the Board of Visitors adjudication against the plaintiff was void, it would be an abuse of the process of the court to allow the actions to proceed and thereby avoid the protection afforded to statutory tribunals.
- C [13] The same proposition was taken by the House of Lords in *Cocks v. Thanet District Council* [1982] 3 All ER 1135. The issue is whether the respondent was entitled to proceed against the appellant for a declaration that the appellants owed him a duty to
- D provide him with permanent accommodation or whether the respondent was required to apply for judicial review of the appellant's decision. Lord Bridge of Harwick held that it would amount to an abuse of the process of the court for an unsuccessful applicant for accommodation under the 1977 Act to
- E challenge the decision of the housing authority by way of declaration rather than by judicial review under O. 53.
- F [14] Those propositions are also the proposition adopted by our courts. In *Shaharuddin Ali & Anor v. Superintendent of Lands and Surveys Kuching* [2004] 4 CLJ 775, at p. 787 & 788 His Lordship Clement Skinner J held that:
- G ... plaintiff's remedy to enforce or protect rights created or acquired or recognized in accordance with the provisions of the Land Code must be sought under the public law and not private law. That being the case, the plaintiffs here should have proceeded to seek judicial review of the minister's direction and the 1st defendant's decision under O. 53 RHC ...
- At p. 792, His Lordship continued:
- H It was an abuse of process for the plaintiffs to resort to an action for declaration and thereby evade the requirements of O. 53 RHC ...
- I In *Arab Malaysian Finance Bhd v. Steven Phoa Cheng Loon & Ors* [2003] 1 CLJ 585 at p. 616, His Lordship Gopal Sri Ram JCA said:

Now, assuming that there was a duty on the 4th defendant to act in a particular manner towards the property of the plaintiff post collapse, such duty must find its expression in public and not private law. Accordingly if there had been a failure on the part of the 4th defendant to do or not to do something as a public authority, the proper method is to proceed by way of an application for judicial review.

A

B

In *Soonly Limes Factory Sdn Bhd v. Pengarah Jabatan Pengangkutan Jalan Negeri Perak* [2006] 2 CLJ 676. His Lordship Mohd Azman Husin J, at p. 683 held that:

C

Since the plaintiff's cause of action, namely the defendant's refusal to renew the road tax of the plaintiff's vehicle is grounded on public law, the plaintiff should have pursued his public law remedies through judicial review proceedings under O. 53 RHC and not by way of originating summons.

D

Bencon Development Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Ors [1999] 8 CLJ 37, *Subramaniam Vythilingam v. The Human Rights Commission of Malaysia (Suhakam) & Ors* [2003] 6 CLJ 175, *TR Rumah Lampoh Dana & Ors v. Government of Sarawak* [2005] 8 CLJ 705 and *Robert Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [2005] 8 CLJ 613 all decided that if the plaintiff choose to challenge the act or decision of any public body or public authority under a public law by resorting to other forms of action other than by way of an application for judicial review under O. 53 RHC, such action would amount to an abuse of process of the court.

E

F

[15] The plaintiff sought to rely upon the decisions in *Sugumar Balakrishnan v. Chief Minister State of Sabah & Anor* [1988] 1 LNS 210 and *Teh Guan Teik v. Inspector-General of Police & Anor* [1998] 3 CLJ 153 to strengthen his argument that the plaintiff could co-opt by way of judicial review or by way of declaration as is presently done here. However in my view the authorities cited were not exactly on point on account that the two cases were decided prior to the amendment to O. 53 RHC in the year 2000. His Lordship Peh Swee Chin FCJ in *Teh Guan Teik (supra)* gave his reasons for not following *O' Reilly (supra)* in the following terms:

G

H

I

- A The decision of *O'Reilly v. Mackman* was not followed in the Malaysian courts, as clearly stated in *Sugumar Balakrishnan v. Chief Minister of the State of Sabah & Anor* [1988] 1 LNS 210. The reason why *O'Reilly v. Mackman* was not followed is because our Rules of High Court has not adopted the law reforms as embodied in Order 53 of the Rules of the Supreme Court of England.
- B

With the amendment to O. 53, this reasoning is no longer valid.

- C [16] As regards to *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2002] 2 CLJ 697 which is also relied by the plaintiff, in my view the said authority does not postulate the notion that the plaintiff is at liberty to either choose to proceed by way of a writ action or by way of an application for judicial review under O. 53. The appellant here infact proceeded its action by way of judicial review. Rather the issue for the court's determination was whether the appellant could consolidate its claim for declaration together with other remedies available. His Lordship Gopal Sri Ram JCA in allowing the appellant's appeal said:
- D

- E Bearing in mind the decision in *Trustees of the Dennis Rye Pension Fund & Anor v. Sheffield City Council* [1997] 4 All ER 747 as was approved in *Steel v. Secretary of State for the Home Department* [2000] 3 All ER 226, it is the view of this court that the appellant was entirely correct in invoking the provisions of Order 53 of the RHC.

- F A rule of court should not be interpreted in such a way as to result in unfairness or produce manifest injustice. Such manifest injustice would occur in this case if Order 53 of the RHC were to be read restrictively so as to permit an applicant to claim a declaration only where he applies for it jointly with other remedy.
- G Under paragraph 1 of the Schedule to the Courts of Judicature Act 1964, the courts have the power to issue such orders and grant such relief as is appropriate to the particular circumstances of a given case.

- H [17] In the light of the authorities enumerated above it is my view that the procedures as laid down by O. 53 RHC is exclusive to cases whereby applications by way of judicial review is mandated. In public law matters such as the plaintiff's application herein to challenge the decisions made by the 1st and 2nd defendant which, no doubt are public authorities or where the plaintiff is seeking relief or remedy for the infringements of rights protected by public law, the proper route is by way of an
- I

application for judicial review to declare that the decisions made there-under is null and void. Such mechanism is only afforded by invoking the provisions of O. 53 RHC. A

[18] The rationale behind this principle is that the provisions are designed to protect those entrusted with the enforcement of public duties against spurious, unfounded and baseless allegations by way, as was outlined by Lord Diplock in *O'Reilly (supra)*: B

- (a) the need to obtain leave to apply;
- (b) the need to file affidavits from the outset, so that the case has to be stated on oath and with the utmost good faith, an important safeguard against groundless or unmeritorious claims in contrast with the unsworn pleadings in an ordinary action; C
- (c) the court's power on granting leave to impose terms as to costs or security; D
- (d) very speedy procedure, available in urgent cases within a matter of days rather than months; and
- (e) the time limit, now reduced to 40 days and extended to all forms of relief" E

[19] In my view, failure to comply is an abuse of the process of the court and an attempt to circumvent or evade the clear requirements of O. 53 of the said RHC. F

[20] It is also the submission of the plaintiff that the 1st, 2nd, 3rd and 4th defendants cannot at this stage raise the issue of non-compliance of O. 53 requirements on the grounds that this issue is not included in "Isu-isu Untuk di Bicarakan" – Lampiran 52. In this regard I am with the learned SFC's submission that Lampiran 52 relates to issues of facts agreed by the parties to be tried during the trial whereas issues of non-compliance of legal requirements are matters of law to be ventilated at the stage of submission or at any stage of the proceedings. No witnesses are required to testify on matters of law and the exclusion of the same in Lampiran 52 does not prevent the said defendants from arguing or raising the same at the submission stage. Additionally there was no issue that the plaintiff was taken by surprise at this line of argument for the said defendants had plainly pleaded the same in their statement of defence as indicated in para 17 of the same. G
H
I

- A [21] Equally the failure of the 1st, 2nd, 3rd and 4th defendants to take steps to strike-out the writ and statement of claim on grounds of non-compliance at the earliest possible stage of the proceedings is no ground to restraint the said defendant from raising the issue now. This issue is part of the said defendants' defence.
- B The issue was specifically pleaded in their pleadings. They have sufficiently communicated to the plaintiff the grounds and facts they are relying to defeat the plaintiff's claim. There is nothing in law making it mandatory for the defendants to initiate striking out proceedings on account that the plaintiff had abused the process of the court. That is only an option which is best left to the defendants to decide when to have it raised.
- C

- [22] For all the reasons given, I refused and dismissed the plaintiff's prayers as embodied in para 28(a), (b) and (c) of the plaintiff's statement of claim.
- D

[23] As regards to the liabilities of the parties herein, the following are my findings.

As Against The 1st And 2nd Defendants

- E [24] Puspakom Sdn Bhd (5th defendant) is a company licensed by the Transport Minister to conduct examinations or inspections of motor vehicles on behalf of the 1st and 2nd defendants under s. 126 of the Road Transport Act 1987, for purposes of motor vehicle registration and other related matters. By virtue of the same, the 1st and 2nd defendants no longer conducts any motor-vehicle examination or inspection on their own. They relied solely on the examinations or inspections conducted by the 5th defendant in exercising and carrying out their statutory functions and duties.
- F
- G

- [25] DW1 for the 1st and 2nd defendants, testified that the motor-vehicle in issue (JDW 3301) was registered on 1 March 1996. Prior to the registration, as the said vehicle is a commercial vehicle, the owner or applicant will have to produce before the Jabatan Pengangkutan Jalan (JPJ) for the JPJ's perusal Borang JPJ K1, Lapuran Pemeriksaan Awalan (PG 11A) oleh Puspakom, Borang Kastam 1, Lesen Import, Salinan Kad Pengenalan Pemohon, Daftar Syarikat Pemohon, Surat Kelulusan Permohonan Baru Kenderaan Perdagangan dari Lembaga Pelesenan Kenderaan Perdagangan (LPKP) and Surat Tuntutan Hakmilik daripada Bank.
- H
- I

- [26] The Lapuran Pemeriksaan Awalan by Puspakom was also submitted by the applicant. It was dated 13 February 1996 and exhibited at pp 1 and 2 of Ikatan Dokumen Defendan Pertama hingga Keempat, marked Lampiran 49. This Lapuran Pemeriksaan Awalan states that the chassis number of the said vehicle as found and reported by the 5th defendant to be YV2A4A2A0G08800017.
- [27] The JPJ preceded to register the said vehicle based upon the documents and details submitted by the applicant as well as upon the information recorded by the 5th defendant in their Lapuran Pemeriksaan Awalan after they have conducted a physical examination of the said vehicle. The JPJ themselves does not conduct any physical examination of the said vehicle. They were not under any duty to do so.
- [28] DW1 added that the ownership of the said vehicle was transferred to the plaintiff on 8 June 1998. For this purpose, the plaintiff is to submit to the JPJ Borang JPJ K3, Salinan Kad Pengenalan Penjual dan Pembeli, Daftar Syarikat, Surat Pelepasan Tanggungan and Surat Tuntutan Hakmilik daripada bank. The documents were as shown at pp. 5 to 7 Lampiran 49 and pp. 3-4 Ikatan Dokumen Tambahan Defendants Pertama hingga Keempat, marked as Lampiran 54. The chassis number of the said vehicle recorded in the some of the documents submitted by the plaintiff also carried the number YV2A4A2A0G08800017.
- [29] DW1 also testified that for the purpose of issuing the said vehicle's Lesen Kenderaan Motor, the plaintiff is duty bound to produce a new Lapuran Pemeriksaan Awalan by Puspakom. The physical examination of the said vehicle by the 5th defendant was done on 11 June 1998. Again the examination by the 5th defendant of the said vehicle on this instant shows that the said vehicle carried the same chassis number YV2A4A2A0G08800017, consistent with the findings of the first examination conducted on 13 February 1996 and the number recorded on the said vehicle's Perakuan Pendaftaran JPJ K2 issued on 1 March 1996.
- [30] DW1 further testified that the registration of the said vehicle does not depend upon the details provided by Borang Kastam 1. Equally, the accuracy of the details in the Borang Kastam 1 is irrelevant. Borang Kastam 1 is only material to confirmed that the said vehicle is an imported one.

- A [31] Based on the evidence enumerated above, it is my findings that the 1st and 2nd defendants cannot be guilty of committing a typographical error when entering the details of the said vehicle's chassis number in the Perakuan Pendaftaran JPJ K2 of the same as alleged by the plaintiffs. The 1st and 2nd defendants wholly
- B acted upon the details supplied the person who first applied for the registration of the said vehicle and later the plaintiff himself and principally upon the findings of the physical examination conducted by the 5th defendant. There is no duty imposed upon the 1st and 2nd defendants to themselves conduct a physical
- C examination of the said vehicle to verify the findings of the 5th defendant. The 5th defendant has been legally and properly entrusted to carry out this statutory functions on behalf on the 1st and 2nd defendants. It has not been shown any where by the plaintiff that the 5th defendant has miserably failed to carry out
- D this statutory functions according to law.

- [32] According to DW4 there were not less than 14 physical examinations conducted upon the said vehicle by the 5th defendant between the first pemeriksaan awalan on 13 February
- E 1996 prior to the registration of the said vehicle and the examination conducted on 13 May 2002 done at the request of the plaintiff for the purpose of changing the entire engine of the said vehicle. These 14 examinations were conducted on different dates, by different vehicle examiners of the 5th defendant and at
- F different locations of the 5th defendant's premises. Except for the examination conducted on 13 May 2002, the 14 examinations conducted earlier revealed similar findings ie, the chassis of the said vehicle carried the number YV2A4A2A0G08800017. The said examinations also did not reveal that the said chassis number had
- G been tampered with in any manner. The consistency of these findings negates any notion that the examinations were not diligently and properly conducted. On the balance of probabilities, these 14 different vehicle examiners cannot be committing the same mistakes over and over ie, coming up with the same chassis
- H no. YV2A4A2A0G08800017 at 14 different physical examinations, on 14 different dates and at various different locations of the 5th defendant's premises between 13 February 1996 and 13 May 2002. It also negates any notion of negligence, breach of statutory duties under the Road Transport Act, breach of duty of care, breach of common law duty of care, breach of duty under s. 11
- I of Road Transport Act ie, to ensure the accuracy and validity of the particulars, information and details contained in the Perakuan

Pendaftaran JPJ K2 of the said vehicle, in particular its chassis number and other allegations as contained is para 20(a) to (h) of the plaintiff's statement of claim on the part of the 1st and 2nd defendants.

[33] The authority cited by the plaintiff ie, *Pendaftar dan Pemeriksa Kereta-kereta Motor Melaka & Ors v. KS South Motor Sdn Bhd* [2000] 2 CLJ 573 has no application here for there is no evidence that there was tampering or falsification of the records of the said vehicle in the possession of the JPJ by persons known or unknown to JPJ or that the particulars, information and details therein were inaccurate or invalid or incorrect or had been tampered with to warrant the findings that the 1st and 2nd defendants had failed in their duty to maintain a proper register for all vehicles registered under the Road Transport Act 1987 and to ensure that such register shall contain particulars, information and details which would assist a *bona fide* purchaser or persons interested or have dealings in vehicles.

[34] Equally it is never the case here that the 1st or 2nd defendant or JPJ in general had supplied incorrect, inaccurate or invalid particulars or information relating to the records of the said vehicle. It is also not the case here that the records of the said vehicle in the possession of the 1st or 2nd defendant or JPJ in general were incorrect or inaccurate or invalid or in particular, that the wrong chassis number was entered into the records of the said vehicle. What was supplied to the JPJ either by the person who first registered the vehicle or subsequently by the plaintiff or the 5th defendant were accurate and correct all along until the examination of the vehicle on 13 May 2002, where it was found that the said vehicle now carried a different chassis number, contrary to the number revealed and recorded in the previous 14 physical examinations. In the circumstances on no account could the 1st or 2nd defendant be accounted to account for the discrepancy. The said discrepancy obviously emanates from the said vehicle which was all the while in the possession of the plaintiff and not from the records of the said vehicle in the possession of the 1st or 2nd defendant. In my view on the balance of probabilities, the 1st and 2nd defendants carries no blame at all for the said discrepancy. As reiterated earlier the 14 different vehicle examiners cannot be committing the same mistakes, ie, coming up with the same chassis number at 14

A

B

C

D

E

F

G

H

I

A different physical examinations, on 14 different dates and at various different locations of the 5th defendant's premises. Consequently the 1st and 2nd defendants are not liable at all for the mess in which the plaintiff is now in.

B **As Against The 3rd Defendant**

[35] The plaintiff conceded that the 3rd defendant carried no liability at all in this case.

As Against The 4th Defendant

C [36] In the light of the findings of liability against the 1st and 2nd defendant enumerated above and the concession against the liability of the 3rd defendant, the 4th defendant thus cannot be vicariously liable for a liability that does not exist among its agencies.

D **As Against The 5th Defendant**

E [37] As said earlier, in respect of registration of motor vehicles, the 5th defendant was entrusted with the duty of carrying out the functions of vehicle examinations and other related matters thereto on behalf of the 1st and 2nd defendants or in general terms, the JPJ, by virtue of s. 126 of Road Transport Act 1987. This much was agreed by the plaintiff. The 5th defendant will issue the certificate of examination only upon examination of the vehicle by physical or visual means. The certificate and details of the examination will thereafter be forwarded to the JPJ for the registration of the vehicle and the relevant datas will be entered or recorded in the vehicle's Perakuan Pendaftaran JPJ K2.

F

G [38] The evidence in this case presently before me revealed that the said vehicle (JDW 3301) was first examined by the 5th defendant on 13 February 1996. They found the chassis number for the said vehicle to be YV2A4A2A0G08800017. Thereafter during the ownership of Metro Cosmos, the said vehicle went through a total of 3 examinations, twice at the 5th defendant's Cawangan Padang Jawa in Klang and once at the 5th defendant's Cawangan Muar. Again after the ownership of the said vehicle was transferred to the plaintiff, it went through a total of 11 examinations, on 6 occasions at the 5th defendant's Cawangan Melaka and 5 occasions at the 5th defendant's Cawangan Muar.

I

[39] In all these 14 examinations the results were the same ie, the said vehicle carried the same chassis number as revealed in the first examination on 13 February 1996. This number was also the same number recorded/entered in said vehicle's Perakuan Pendaftaran JPJ K2. In the event, in my view, on the balance of probabilities the same results or findings obtained by the various vehicle examiners of the 5th defendant, at various dates and at various premises of the 5th defendant's branches clearly indicated that the said examinations were properly conducted and done and the results or findings obtained were correct and accurate. As said earlier it is highly improbable that those different or various vehicle examiners could have committed the same mistakes in their findings ie, coming up with the same chassis number YV2A4A2A0G08800017 at 14 different physical examinations, on 14 different dates and at various premises of the 5th defendant's branches.

[40] The procedures as regards to the examination of the said vehicle which was done manually and visually was challenged by the plaintiff. It was alleged that the procedures were inadequate, giving rise to inaccurate result and uncertainties. However the 5th defendant adopted 3 manual procedures altogether namely Manual Procedure Penganalisaan Bagi Syarikat Pemeriksaan Kenderaan Berkomputer, Manual Operasi Pemeriksaan Khas and Manual Operasi Pemeriksaan Visual Mekanikal Bahagian Atas Kenderaan. Apart from bare allegations, the plaintiff did not produce any evidence to show that the various examinations of the said vehicle done by manual or visual means were inadequate or faulty, resulting in inaccurate findings. There is no basis at all to act upon to suggest that the procedures adopted by 5th defendant in the examinations of the said vehicle is inadequate or inaccurate.

[41] DW5 conducted a visual examination of the said vehicle on 13 May 2002. He found the chassis number of the said vehicle to be different from the one recorded in the said vehicle's Perakuan Pendaftaran JPJ K2. The number he found was YV2F7A2A0GC880017. There were 2 alphabetical and 2 numerical differences in the number now found, namely F instead of A, 7 instead of 4, C instead of O and one O now not existing. Thereafter the said vehicle was again sent for examination on 2 more occasions for further confirmation, namely on 15 May 2002 and 6 August 2002. Nevertheless the two further examinations merely confirmed the findings of DW5's examination on 13 May 2002. The said vehicle was then sent to the Jabatan Kimia for

A

B

C

D

E

F

G

H

I

- A further verification. The Jabatan Kimia which adopted a different procedure which is a lot more scientific and technologically ahead in the examination of the chassis number of the said vehicle also confirmed the findings of DW5's examination. The number they found was the same as that found by DW5. The Jabatan Kimia
- B also added that the said number was not tampered.

- [42] The findings or result of the Jabatan Kimia's examination which adopted a different procedure but arriving at the same findings as that conducted by the 5th defendant clearly indicated
- C that the procedures adopted by the 5th defendant in the examination of the said vehicle is equally proper, regular and accurate. Again in such event there is no basis to suggest that the procedures adopted by the 5th defendant is inadequate, prone to inaccuracies and mistakes as alleged by the plaintiff.

- D [43] In my view the discrepancy in the findings of DW5's examination and also the subsequent examinations both by the 5th defendant and Jabatan Kimia with the 14 previous examinations and records appearing in the said vehicle's Perakuan Pendaftaran JPJ K2, is a major discrepancy. If at all it exists all
- E these while, it could have been easily spotted by the previous examiners. It makes no sense for none of them to have been able to spot the discrepancy much earlier if it really does exist. Consequently the only irresistible inference is that the chassis of
- F the said vehicle was replaced prior to the examination conducted by DW5 on 13 May 2002.

- [44] In the event it is thus my findings that no negligence could be attributed upon the 5th defendant when they first examined the said vehicle on 13 February 1996 or during the 13 other
- G subsequent examinations or upon the examination conducted on 13 May 2002. Consequentially I find that the chassis number of the said vehicle as recorded/entered in the vehicle's Perakuan Pendaftaran JPJ K2 based upon 5th defendant's examinations of the said vehicle is correct and accurate and that all the
- H examinations conducted by the 5th defendant were proper and the result or findings obtained therefrom were also accurate. There is on the facts, no typographical error involved. It is thus my further findings that the 5th defendant was not in breach of its contractual obligations to the plaintiff nor was the 5th defendant
- I in breach of any duty of care at common law. Neither was the

5th defendant in breach of any statutory functions or statutory duties imposed by law. In essence the 5th defendant equally shoulders no liability at all.

As Against The 6th Defendant

[45] It is my findings that the plaintiff has no cause of action against the 6th defendant. The 6th defendant did not sell the said vehicle to the plaintiff but to Metro Cosmos. The initial registration of the said vehicle was also not done by 6th defendant.

[46] The fact that the 6th defendant issued a declaration containing wrong particulars and mistakes to the 3rd defendant at the time of importing the said vehicle into the country is irrelevant on account that the 1st and 2nd defendant or JPJ in general, did not rely at all upon the said Borang Kastam I when the said vehicle was registered but among others upon the examination and result of the examination of the said vehicle by the 5th defendant. The said Borang Kastam 1 is only relevant to confirmed that the said vehicle is an imported vehicle and a different classification of the vehicle is thereafter given by the JPJ.

[47] Upon the said premise I also absolved the 6th defendant of any liability.

Conclusion

[48] The plaintiff carried the burden to prove his claim and allegations against all the six defendants. Upon the evidence adduced I am satisfied that on the balance of probabilities, the plaintiff failed to discharge the said burden. Consequently I dismissed the plaintiff's claim in its entirety with costs.

A

B

C

D

E

F

G

H

I